

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

BILL NUMBER: Senate Bill 786 (Second Edition)

SHORT TITLE: Energy Modernization Act.

SPONSOR(S): Senators Rucho, Newton, and Brock

FISCAL IMPACT

(\$ in millions)

Yes No No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
NET STATE IMPACT	Likely budget cost. See Assumptions & Methodology section for additional details.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Administrative Office of the Courts; Indigent Defense Services; Department of Public

EFFECTIVE DATE Criminal penalties effective December 1, 2014

TECHNICAL CONSIDERATIONS:

None

FISCAL IMPACT SUMMARY:

This Incarceration Note only addresses the changes to criminal penalties included in Sections 8 and 15 of the bill. A separate Fiscal Note has been completed addressing the potential fiscal impact of other sections of S.B. 786, Energy Modernization Act.

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the new offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$31 - \$365 per disposition
- Indigent Defense Services: \$182 - \$245 in district court
\$359 - \$455 in superior court without a trial
\$847 - \$1,046 in superior court with a trial
- Prison Section: \$2,461 in the first full year of implementation

- Community Corrections: Minimum of \$1,118 in the first full year of implementation

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

S.B. 786 creates two new criminal penalties:

- Section 8 of the bill creates a new Class I felony for knowingly disclosing confidential information pursuant to the newly created G.S. 113-391A, Trade secret and confidential information determination; protection; retention; disclosure to emergency personnel.
- Section 15 of the bill creates a new Class 3 misdemeanor for conducting seismic or geophysical collection activities without the landowner's written consent.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. In addition, all F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Since the bill creates two new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be convicted and sentenced under the new statutes.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 8 of the bill creates a new Class I felony offense. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class I felony, the average cost to the court would be \$365.

Section 15 of the bill creates a new Class 3 misdemeanor offense. Because this is a new offense, AOC does not have historical data upon which to estimate the number of charges that might occur. AOC provides

estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class 3 misdemeanor, the average cost to the court would be \$31.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a new Class I felony will be \$245 per case for a private appointed counsel (PAC) attorney in district court. In superior court, IDS estimates that the cost would be \$455 if the case does not go to trial and \$1,046 if it does. For a Class 3 misdemeanor, the costs are \$182 in district court, \$359 in superior court with no trial, and \$847 in superior court if the case goes to trial.

Department of Public Safety –Prison Section

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 2013.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three). The Sentencing and Policy Advisory Commission could not estimate the number of people that may be incarcerated as a result of the new criminal penalties in this bill. However, a need for additional prison beds is not expected.

Population Projections and Bed Capacity					
Five Year Impact					
	June 30 2014	June 30 2015	June 30 2016	June 30 2017	June 30 2018
1. Inmates ²	37,679	37,795	37,913	37,626	37,419
2. Prison Beds (Expanded Capacity)	39,103	39,103	39,103	39,103	39,103
3. Beds Over/(Under) Inmate Population	(1,424)	(1,308)	(1,190)	(1,477)	(1,684)
4. Additional Inmates Due to this Bill³	No estimate available				
5. Additional Beds Required					

Although no additional beds will be required for this bill, additional spending may be required to house new prisoners charged with the new Class I felony created by it. Per diem expenditures for each inmate are approximately \$11.49. The table below shows the per diem rate for each year of the five year projection, adjusted for inflation.

¹ **Expanded Operating Capacity (EOC)** is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in March 2014.

³ Criminal penalty bills effective December 1, 2014 should not affect prison population and bed needs until FY 2015-16 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

**Daily Incarceration Cost Adjusted for Inflation
Five Year Projection**

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%
Per Diem Cost	\$11.49	\$11.72	\$11.96	\$12.26	\$12.59	\$12.91

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

Section 8 of the bill creates a new Class I felony for knowingly disclosing confidential information pursuant to the newly created G.S. 113-391A, Trade secret and confidential information determination; protection; retention; disclosure to emergency personnel. According to the Sentencing and Policy Advisory Commission, in FY 2012-13, 16 percent of Class I felony offenders received an active sentence averaging seven months. For every one offender receiving an active sentence for the new violation, the cost to the Prison Section is estimated to be \$2,461 in the first full year of implementation (\$11.49 daily cost adjusted for inflation to \$11.72 for the first full year of implementation multiplied by 210 days).

Section 15 of the bill creates a new Class 3 misdemeanor offense. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because offenders who receive active sentences of less than 180 days will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections resulting from this new offense..

Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

All types of post-release supervision, including intermediate or community sanctions, are supervised by the Community Corrections Section (CCS); CCS also oversees community service. General post-release supervision and supervision of intermediate and community offenders by a probation officer costs \$4.06 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision, intermediate sanctions and supervised probations. The table below shows the per diem rate for each year of the five year projection, adjusted for inflation.

**Daily Supervision Cost Adjusted for Inflation
Five Year Projection**

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
Inflation Rate		1.96%	2.11%	2.52%	2.70%	2.47%
Per Diem Cost	\$4.06	\$4.14	\$4.23	\$4.33	\$4.45	\$4.56

Inflation Rates based on consumer price index projections provided by Moody's economy.com (Apr. 2014)

Section 8 of the bill creates a new Class I felony offense. In FY 2012-13, 16 percent of Class I felony offenders received active sentences; 27 percent received intermediate sentences; and 57 percent received community punishments. All active sentences result in nine months of post-release supervision (PRS). The average lengths of intermediate and community punishment imposed for this offense class were 26 and 23 months, respectively. Therefore, at a minimum, one conviction resulting from Section 8 of this bill will require at least nine months of supervision in the first full year of implementation. The cost of nine months of supervision is \$1,118 per offender (\$4.06 per day adjusted for inflation to \$4.14 for the first full year of implementation times 270 days).⁴

Section 15 of the bill creates a new Class 3 misdemeanor offense. In FY 2012-13, 32 percent of Class 3 misdemeanor offenders received active sentences; less than one percent received intermediate sentences; and 68 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 14 and 12 months, respectively. Therefore, at a minimum, one conviction resulting from Section 15 of this bill will require at least 12 months of supervision in the first full year of implementation. The cost of 12 months of supervision is \$1,511 per offender (\$4.06 per day adjusted for inflation to \$4.14 for the first full year of implementation times 365 days).⁵

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

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⁴ Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.

⁵ Due to the effective date of December 1, 2014 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2014-15. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2015-16.